

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NICOLAS GOUREAU and STEPHANIE :  
MENKIN, individually and derivatively on behalf :  
of GOOBERRY CORP., a New York corporation, :

Plaintiffs, :

v. :

MARCUS LEMONIS, an individual, ML :  
RETAIL, LLC, a Delaware limited liability :  
company, and MARCUS LEMONIS, LLC, a :  
Delaware limited liability company, :

Defendants, :

and :

GOOBERRY CORP., a New York corporation, :

Nominal Defendant. :

Civil Action No. 1:20-cv-04691

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
CLARIFICATION AND/OR FOR AN  
ORDER ALTERING OR AMENDING  
JUDGMENT UNDER RULE 59(e) OR, IN  
THE ALTERNATIVE, FOR RELIEF  
FROM JUDGMENT UNDER RULE  
60(b)**

Upon consideration of the parties' respective papers and arguments, Plaintiffs' Motion for Clarification and/or for an Order Altering or Amending Judgment under Rule 59(e) or, in the Alternative, for Relief from Judgment under Rule 60(b) is hereby granted. The judgment issued on November 22, 2021 (Dkt. No. 99) is clarified to have effectuated the dismissal of the claims included therein [with prejudice/without prejudice]. [However, the Court hereby amends said judgment to provide that the claims included therein have been dismissed without prejudice pursuant to the Court's powers under Rule 41(a)(2).]

**SO ORDERED.**

Dated: This \_\_\_\_ day of

\_\_\_\_\_, 2021.

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The Honorable Mary Kay Vyskocil  
United States District Judge